situation of the man and the bear at grips, and neither can let go because each has to have the other. Meantime the bear does not seem to be suffering, since the courts forbid the man to do anything to kill him, or even to prevent his having plenty of sustenance, provided always he will not be too hard on the man. The court will umpire the contest, but it seems to remain a perpetual draw, which worries the city but is at most a slight annoyance to the company.

RAILROADS—INJURIES AT CROSSING—STATIONARY GONG—CONTRIBUTORY NEGLIGENCE—QUESTION FOR THE JURY.—The plaintiff Guest and his automobile were injured in a collision with the defendant's passenger train at a crossing. There was evidence tending to show that the automatic stationary electric gong failed to ring as the train approached; that the plaintiff failed to stop, look, or listen before attempting to cross; that a signboard partially obstructed his view of the track. *Held,* that the question of contributory negligence was for the jury even though the plaintiff failed to stop, look and listen—if the automatic gong failed to ring. *Bush* v. *Brewer et al.,* (Ark. 1918), 206 S. W. 322.

The failure to sound the stationary gong created an exception to the general rule that where a traveler does not use his senses to guard his own safety the question is purely one of law for the court. It became a question for the jury to decide whether the plaintiff was actually negligent in failing to look and listen for approaching trains while behind the signboard, since the silence was in a measure an invitation to the public to cross. The *dissenting* views admitted that the opening of a gate operated by a flagman is an invitation to cross but insisted that there is no such invitation when a gong fails to ring since such contrivances are known to be out of repair frequently. The courts are by no means agreed as to the effect of a reliance on the absence of customary warning signals situated at crossings. The principal case is supported by *Tobias* v. *Railroad Co.,* 103 Mich. 330, where the question was left to the jury even though it was clear from the evidence that the plaintiff could have seen the train had he looked. But other cases hold that the question is still for the court if the traveler has failed to stop, look and listen; the failure of the automatic gong to ring does not justify any relaxation of vigilance. *Conkling* v. *Erie R. R. Co.,* 63 N. J. L. 338; *Jacobs* v. *Railway Co.* 97 Kansas 247; *McSweeney* v. *Erie R. R. Co.,* 87 N. Y. Supp. 836. The conflict appears also among the gate cases. In *Koch* v. *Southern Cal. Ry. Co.,* 148 Cal. 677 the court declared that the traveler could rely on the raising of the gates but that he had to look and listen nevertheless; otherwise he could not recover as a matter of law—"he must show more as to his conduct than that he so relied." The dissenting opinion in the California case cited many cases to prove that the raising of the gates was an invitation to cross and that this was enough to make a jury question. *Geoffroy* v. *New York N. H. & H. R. Co.,* (R. I. 1918), 104 Atl. 883 decided last month, is in accord with the theory of the principal case but it adds a qualification which the principal case did not have to consider. The Rhode Island court admitted that the opening of the gates brought the question to the jury even though the plaintiff did not stop, look, and listen where it was possible that he exercised due care notwithstanding

such failure to use his senses—the location of the gates whether in a city or in the country, the presence or absence of traffic on the highway, the presence of obstructions or the presence of the gateman are all circumstances which might call for a reliance on the signal without resorting to other precautions; but where the evidence clearly showed that he could have seen the train had he used his senses the question was for the court as a matter of law. This last case seems to meet the situation satisfactorily since it allows no undue relaxation of vigilance but at the same time recognizes the psychological element—the apparent invitation—where it is a controlling motive in causing the traveler to cross. The distinction raised by the dissenting view in the principal case is a technical one but not a real one. It discovers a difference in causes but no difference in effects. Whether the controlling agency of the device is a human being or a contrivance is immaterial so long as it can be shown that the psychological effect may be the same—that the traveler thereby actually becomes "less cautious in looking for the coming of a train."

SPECIFIC PERFORMANCE—MUTUALITY OF REMEDY.—A employed B, an attorney at law, to represent him in certain actions in which he (A) was involved. As consideration for services rendered it was agreed that, on the final determination of the actions, A should turn over to B certain shares of stock. B performed the services, but A refused to carry out his part of the agreement. Bill by B for specific performance. Defense: want of mutuality of remedy. *Held*: Specific performance decreed. *Roche et al.* v. *Madar et al.*, (Wash. 1918) 175 Pac. 314.

Mutuality of remedy continues to raise its head with the persistence of Banquo's ghost. It would seem clear that it has no application to a unilateral contract nor to a bilateral contract fully performed on one side. While it is true that equity would not compel B to perform personal services for A, yet the authorities are practically unanimous that, when B has performed the services, he may compel A to perform. Such a result seems inevitable; for it would be most unjust if A who has already received the promised equivalent for his performance, were permitted to plead that he could not have compelled the performance he has received. Yet the uniformly unsuccessful attempts of parties in such a situation to resist performance indicate confusion in the minds of many lawyers as to the real meaning of mutuality. The final word on the subject has been spoken by Ames. Mutuality in Specific Performance, 3 Col. Law Rev. 1; Lectures on Legal History, 370. Cf. Pomeroy, Contracts (ed. 2) §§ 162-174.

TRESPASSING CHILD—LIABILITY FOR NEGLIGENCE TOWARD.—Defendant left his automobile standing at the proper place near the curb on a street, while he was gone about twenty minutees. On his return he found the plaintiff, a small boy about four and one-half years old, with several other small children, upon the right hand running board of his car, near the curb. They asked for a ride. Defendant refused this and drove them away. He then cranked his car, got in it on the left-hand side, noticing that the plaintiff was then on the left-hand running board. The car had a right-hand drive.